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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,774	11/26/2003	Wayne Lederer	16739-002001	9660

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P.O. BOX 1022  
MINNEAPOLIS, MN 55440-1022

EXAMINER
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DABNEY, PHYLESHA LARVINIA

ART UNIT	PAPER NUMBER
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2614

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/06/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/723,774

Applicant(s)

LEDERER, WAYNE

Examiner

Phylesha L. Dabney

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) 2-11 and 13-24 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1, 12 and 35 is/are allowed.
- 6) ☒ Claim(s) 25-29, 31 and 36-39 is/are rejected.
- 7) ☒ Claim(s) 30 and 32-34 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

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### **DETAILED ACTION**

This action is in response to the Amendment received on 18 December 2006 in which claims 1-39 are pending.

#### ***Election/Restrictions***

This application contains claims directed to the following patentably distinct species:

Species **I**: Figures **1-2** read on first embodiment with transducer on the outside of housing.

Species **II**: Figure **3** read on the second embodiment with transducer inside the housing.

Species **III**: Figures **4-5** read on the third embodiment of a stethoscope.

Claims **2-11 and 13-24** of Species **II** and **III** are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 05 June 2006.

Applicant's election with traverse of claims **1, 12, 25-34** of Species **I** in the reply filed, is acknowledged. The traversal is on the ground(s) that the additional examination of Species **II** (claims **13-20**) would not cause serious burden. This is not found persuasive because it is clear to the Examiner that multiple species are disclosed, which would require an extensive search beyond the pervious search.

As per the manual of patent examination procedure, an Election of Species may be required when an application recites such a multiplicity of species that an unduly extensive and

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burdensome search and eventual office action on the merits would be necessary to search the entire scope of the claims [MPEP 808.01, 808.01(a)]. The requirement is still deemed proper and is therefore made FINAL.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 25-29, 31, and 36-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ziarati (U.S. Patent No. 5,627,902).

Regarding claims 25 and 36-37, Ziarati teaches a non-magnetic headset system comprising: an audio transducer (21); a non-magnetic headset (23) including an ear insert (25, 27) having a through-hole and adapted to fit into an ear canal; and a pneumatic port (22, col. 7 lines 55-65) disposed in the hole in the ear insert to receive audible sound waves from the audio transducer.

Ziarati does not teach a removable piece adapted to cover the ear insert and provide access to the ear insert.

However, the Examiner takes official notice that it is known in the art to include a removable piece to allow easy access to portions of the headset for repair or replacement thereof.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to structure the headset system to include a removable piece(s) in the

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invention of Ziarati for allowing easy access to portions of the headset for repair or replacement.

Regarding claim 26, Ziarati teaches the system of claim 25 wherein the audio transducer comprises a magnetically inert transducer (21).

Regarding claim 27, Ziarati teaches the system of claim 26 wherein the magnetically inert transducer comprises a piezoelectric transducer (21, col. 6 lines 62-67).

Regarding claims 29 and 38-39, it discloses a method corresponding to the apparatus of claims 1 and/or 25-28, 36-37. The method is inherent that it simply provides a logical implementation of the structure of claims 1 and/or 25-28, 36-37.

Regarding claim 28, Ziarati does not specifically teach the headset of claim 2 wherein the non-magnetic audio transducer comprises an electrostatic transducer.

However, Ziarati allows the transducer to be any well-known non-magnetic transducer (col. 6 line 62 through col. 7 line 5). It is known to use electrostatic transducers in a headset system as an alternate non-magnetic means for providing audible sound to the user. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use any known non-magnetic transducer, such as electrostatic, in the invention of Ziarati for providing audible sound.

Regarding claim 31, Ziarati teaches that the ear cup has a sound absorbing cushion (col. 7

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lines 48-51), but Ziarati fails to teach specifically the method of claim 29 comprising disposing the ear insert and pneumatic port in an ear cup having sound absorbing foam (cushion).

However, the Examiner takes official notice that it is known for headset cushions to be made of foam. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use foam as the material used in the sound-absorbing cushion of Ziarati for providing conformity and comfort to the user.

#### ***Response to Arguments***

Applicant's arguments with respect to claims **25-29, 31, and 36-39** have been considered but are moot in view of the new ground(s) of rejection.

#### ***Allowable Subject Matter***

Claims **1, 12, and 35** are allowed. With respect to these claims, the prior art of record fails to teach an ear cup comprising a removable piece adapted to cover the ear insert and provide access to the ear insert as substantially described and connected with the other functional language of these claims.

Claims **30, and 32-34** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

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The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

4,302,635 (Jacobsen et al) and 6,466,681 (Siska, Jr et al) teaches separating (removing) portions of the headset.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phylesha L. Dabney whose telephone number is 571-272-7494. The examiner can normally be reached on Mondays, Wednesdays, Fridays 8:30-4 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curtis Kuntz can be reached on 571-272-7499. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

**Any response to this action should be mailed to:**  
Commissioner of Patents and Trademarks  
P O Box 1450

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Alexandria, VA 22313-1450

**Or faxed to:**

(703) 273-8300, for formal communications intended for entry and for informal or draft communications, please label "Proposed" or "Draft" when submitting an informal amendment.

**Hand-delivered responses should be brought to:**

Customer Service Window  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

March 1, 2007

PLD

